S.B.Civil Second Appeal No.101/2007
Municipal Board, Didwana & Anr.
vs
Om Prakash

Date of order : 23.10.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.PR Mehta, for the appellants.

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Heard learned counsel for the appellants and perused the facts of the case as well as the reasons given by the two courts below in the judgments and decrees dated 28.10.2002 and 14.12.2006. The appellate court reversed the decree of the trial court and granted decree of Rs.10,160/- in favour of the plaintiff-respondent. The plaintiff filed the suit for damages against the defendant for Rs.17,475/-. The plaintiff claimed damages on account of loss caused to him by the defendant of Rs.10,160/- and also claimed mense profit @ Rs.2/- per month amounting to Rs.7,315/-. The appellate court decreed the suit for damages to the property, but did not pass decree for mense profit.

Learned counsel for the appellant submitted that the plaintiff filed the suit for injunction, that was dismissed by the trial court and thereafter, action was taken by the appellant-defendant for removal of encroachment of the plaintiff. However,

in that suit for injunction, the appellate court allowed the appeal of the plaintiff-respondent and granted decree for injunction, against which, the present appellant already preferred second appeal before this Court which is pending. According to learned counsel for the appellant since the plaintiff encroached upon the Government land and there was no stay order, therefore, the court below committed serious error of law in decreeing the suit for damages against the appellant.

After going through the facts of the case, I do not find any merit in the appeal and pendency of the appeal arising out of the injunction suit filed by the plaintiff-respondent has no relevancy in this second appeal. Otherwise also, this appeal is not maintainable as the suit valuation was itself of less than Rs.20,000/-.

Hence, the second appeal of the appellant is dismissed having no substantial questions of law.

(PRAKASH TATIA), J.

c.p.goyal/-